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10
11 **UNITED STATES BANKRUPTCY COURT**

12 **CENTRAL DISTRICT OF CALIFORNIA, SANTA ANA DIVISION**

13
14 In re

15 THE SOURCE HOTEL, LLC,

16 Debtor.

Case No. 8:21-bk-10525-ES

Chapter 11

**SHADY BIRD LENDING LLC'S REPLY
TO OBJECTION OF EB5 INVESTORS
TO DEBTOR'S MOTION FOR ENTRY OF
ORDER: (1) ESTABLISHING BIDDING
AND SALE PROCEDURES FOR SALE
OF SUBSTANTIALLY ALL OF THE
DEBTOR'S ASSETS; (2) APPROVING
FORM OF NOTICE TO BE PROVIDED
TO PROSPECTIVE BUYERS; AND (3)
SCHEDULING A HEARING FOR THE
COURT TO CONSIDER APPROVAL OF
THE SALE OF SUBSTANTIALLY ALL
OF THE DEBTOR'S ASSETS**

DATE: September 2, 2021

TIME: 10:30 a.m.

PLACE: Courtroom "5A"

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1 Shady Bird Lending, LLC (“Shady Bird”), hereby submits “Shady Bird
2 Lending, LLC’s Reply to Objection of EB5 Investors to Debtor’s Motion for Entry of Order:
3 (1) Establishing Bidding and Sale Procedures for Sale of Substantially All of the Debtor’s
4 Assets; (2) Approving Form of Notice to be Provided to Prospective Buyers; and (3)
5 Scheduling A Hearing for the Court to Consider Approval of the Sale of Substantially All
6 of the Debtor’s Assets” (the “Reply”), in response to “Objection of EB5 Investors to
7 Debtor’s Motion for Entry of Order: (1) Establishing Bidding and Sale Procedures for Sale
8 of Substantially All of the Debtor’s Assets; (2) Approving Form of Notice to be Provided to
9 Prospective Buyers; and (3) Scheduling A Hearing for the Court to Consider Approval of
10 the Sale of Substantially All of the Debtor’s Assets” (the “EB5 Opposition”), filed by
11 certain EB5 Investors (the “EB5 Investors”), filed in response to the “Notice of Motion and
12 Motion for Entry of Order: (1) Establishing Bidding and Sale Procedures for Sale of
13 Substantially All of the Debtor’s Assets; (2) Approving Form of Notice to be Provided to
14 Prospective Buyers; and (3) Scheduling A Hearing for the Court to Consider Approval of
15 the Sale of Substantially All of the Debtor’s Assets; Declarations of Donald Chae and
16 Chris Jackson in Support Thereof” (the “Motion”), filed by the debtor The Source Hotel,
17 LLC (the “Debtor”), and represents as follows:

18 I.

19 **PREFATORY STATEMENT**

20 The Court should reject the EB5 Investors’ attempt to re-litigate issues
21 previously raised in the context of the Court’s recent approval of the settlement reached
22 between the Debtor, Shady Bird, and the Guarantors.¹ The Court already approved the
23 settlement, which had embedded in it provisions the EB5 Investors again question. For
24

25
26 ¹ Unless otherwise stated, the use of capitalized terms herein shall have the meaning ascribed to them in
27 the “Notice of Motion and Motion for Entry of Order: (1) Establishing Bidding and Sale Procedures for Sale
28 of Substantially All of the Debtor’s Assets; (2) Approving Form of Notice to be Provided to Prospective
Buyers; and (3) Scheduling A Hearing for the Court to Consider Approval of the Sale of Substantially All of
the Debtor’s Assets; Declarations of Donald Chae and Chris Jackson in Support Thereof” [Docket No. 221].

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1 instance, the settlement required the Debtor to schedule a sale hearing for September
2 30, 2021, and there is no reason to adjust this timeframe at all. Filing a 342 page
3 objection with a heavily redacted letter of intent is frankly a waste of the Court's and the
4 parties' time. The EB5 Investors can register and bid at the auction, like any other
5 interested party. This is simply a motion for reconsideration which should be rejected.

6 Any internal issues the EB5 Investors are having which may be delaying
7 their ability to produce a bid are not concerns of the Debtor, Shady Bird, or this Court. To
8 reiterate, the EB5 Investors have known for months that the Debtor was going to be
9 auctioning this property at some not too distant point in the future, and their own delay or
10 dysfunction cannot be used to derail the bargained-for date and terms of the settlement
11 governing the auction sale. If the EB5 Investors believe that insufficient marketing was
12 undertaken, they can raise those objections when the sale motion is filed. There is no
13 need to pre-judge the Debtor's marketing efforts and bow to the EB5 Investors to move
14 the sale hearing by two weeks based on the unsupported assumption that this will
15 increase the value of the property.

16 Similarly, the Court cannot now excise from the bidding procedures the
17 limited right of Shady Bird to be consulted regarding any potential bidder. Contrary to the
18 EB5 Investors' unfounded allegations, Shady Bird is not gaining an unfair advantage by
19 knowing the contents of competing bids before such information is available to other
20 potential bidders, and it certainly is not going to use its consultation rights to influence the
21 Debtor's business decision, especially who is a qualified bidder and who is the successful
22 bidder. In fact, the court-approved settlement expressly prohibits Shady Bird from having
23 any direct or indirect communications with any prospective bidder. It is important to note
24 that Shady Bird retains its statutory right to credit bid under 11 U.S.C. § 363(k), as
25 referenced in the court-approved settlement. Therefore, as a pre-qualified bidder, Shady
26 Bird is not gaining any advantage over other bidders.

27 In addition, as noted, the Debtor, not Shady Bird, will be the ultimate arbiter
28 of what bids to pre-approve for the sale, and the Court will ultimately determine who the

successful purchaser will be on September 30. There are no facts, therefore, that demonstrate that the auction will be anything other than a fair and even playing field, since Shady Bird is not serving as both “referee and player” as the EB5 Investors’ recklessly and falsely allege.

Therefore, the bidding procedures must not be altered to delay the court-approved sale date already selected by the settling parties or to remove the limited consultation rights granted to Shady Bird.²

[Remainder of page intentionally left blank]

² Although not of prime importance for purposes of this Motion, Shady Bird also objects to the request that the bidding procedures include the establishment of an escrow or other mechanism to resolve any priority disputes between the mechanic liens and the secured claims of the EB5 Investors. The bidding procedures also do not need to be revised to take into account the assumption and assignment procedures for executory contracts that the Debtor has represented will be available soon in the form of the separate sale motion. Finally, the bidding procedures do not need to include the typical free and clear language which normally is found in the operative sale motion, not the actual bidding procedures. Again, any of these issues can be taken up by the EB5 Investors when the Debtor files its sale motion.

II.

CONCLUSION

Based on the foregoing, Shady Bird respectfully requests that the Opposition be overruled in its entirety, that the Motion be granted in all respects, and for such other and further relief as the Court deems just and proper under the circumstances.

DATED: September 1, 2021

SulmeyerKupetz
A Professional Corporation

By: /s/ Daniel A. Lev

Daniel A. Lev
Attorneys for Shady Bird Lending, LLC

DATED: September 1, 2021

Law Offices of Ronald Richards & Associates, APC

By: /s/ Ronald Richards

Ronald Richards
Attorneys for Shady Bird Lending, LLC

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PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is 333 South Grand Avenue, Suite 3400, Los Angeles, CA 90071.

A true and correct copy of the foregoing document entitled (*specify*): **SHADY BIRD LENDING LLC'S REPLY TO OBJECTION OF EB5 INVESTORS TO DEBTOR'S MOTION FOR ENTRY OF ORDER: (1) ESTABLISHING BIDDING AND SALE PROCEDURES FOR SALE OF SUBSTANTIALLY ALL OF THE DEBTOR'S ASSETS; (2) APPROVING FORM OF NOTICE TO BE PROVIDED TO PROSPECTIVE BUYERS; AND (3) SCHEDULING A HEARING FOR THE COURT TO CONSIDER APPROVAL OF THE SALE OF SUBSTANTIALLY ALL OF THE DEBTOR'S ASSETS** will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) September 1, 2021, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

See Attached

☒ Service information continued on attached page.

2. SERVED BY UNITED STATES MAIL:

On (*date*) _____, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page.

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (*state method for each person or entity served*): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) _____, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

September 1, 2021

Date

Cheryl Caldwell

Printed Name

/s/Cheryl Caldwell

Signature

ADDITIONAL SERVICE INFORMATION (if needed):

1. SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF")

Ron Bender on behalf of Debtor The Source Hotel, LLC
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